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| APPLICATION NO.                                                                       | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO.            | CONFIRMATION NO. |
|---------------------------------------------------------------------------------------|-------------|-----------------------|--------------------------------|------------------|
| 09/882,198                                                                            | 06/15/2001  | Gregory J. Norsworthy | 115808-460                     | 8393             |
| 29157 7590 01/24/2007<br>BELL, BOYD & LLOYD LLP<br>P.O. Box 1135<br>CHICAGO, IL 60690 |             |                       | EXAMINER<br>ARAQUE JR, GERARDO |                  |
|                                                                                       |             |                       | ART UNIT                       | PAPER NUMBER     |
|                                                                                       |             |                       | 3629                           |                  |

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE  | DELIVERY MODE |
|----------------------------------------|------------|---------------|
| 3 MONTHS                               | 01/24/2007 | PAPER         |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

09/882,198

Applicant(s)

NORSWORTHY ET AL.

Examiner

Gerardo Araque Jr.

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 March 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 9/17/01; 6/9/03
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claims 12 – 19** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. **Claim 12** is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: a method step for marketing a customized food product for a pet using a kiosk.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. **Claims 1 – 4 and 6 – 11** are rejected under 35 U.S.C. 102(e) as being anticipated by **Steury et al. (US Patent 6,416,270 B1)**.
6. In regards to **claim 1**, **Steury** discloses a kiosk configured for selling and manufacturing customized food for a pet, said kiosk comprising:

a customer interface area for receiving information regarding the pet (**Column 4 Lines 38 – 39**);

a biological sample analysis and handling area for analyzing the biological information regarding the pet (**Column 4 Lines 17 – 19**; moreover, each storage unit, tray, as well as the top of the kiosk is capable of providing an area for an individual to work on);

a computer for receiving information regarding the pet and generating a pet profile (**Column 3 Lines 60 – 62**; **Column 4 Lines 38 – 39**);

a base product display area (**Column 4 Lines 16 – 18**);

at least one product additive storage area having at least one shelf (**Column 2 Lines 14 – 18**); and

an ingredient mixing and customer observation area (**Column 4 Lines 17 – 19**; moreover, each storage unit, tray, as well as the top of the kiosk is capable of providing an area for an individual to work on).

7. In regards to **claim 2**, **Steury** discloses wherein said biological sample analysis and handling area is configured with a biological sample disposal area (**Column 2 Lines 1 – 2, 62 – 65**; wherein the kiosk is capable of receiving items from a customer and held, which would then be disposed of, if necessary, by a personnel).

8. In regards to **claim 3**, **Steury** discloses wherein said kiosk is further configured to be expanded or contracted (**Column 3 Lines 56 – 57**).

9. In regards to **claim 4**, **Steury** discloses wherein said kiosk is further configured to be portable (**Claim 1 Part A**).
10. In regards to **claim 6**, **Steury** discloses further comprising a base product storage area (**Column 2 Lines 14 – 18**).
11. In regards to **claim 7**, **Steury** discloses wherein said kiosk is constructed from at least one of wire shelving, stainless steel supports, plastic bins, and laminated wood and stainless steel shelving (**Column 3 Lines 1 – 7**).
12. In regards to **claim 8**, **Steury** discloses wherein said at least one product additive storage area is stocked with at least one of a dry inventory and a liquid inventory (**Column 5 Lines 19 – 21**).
13. In regards to **claim 9**, **Steury** discloses wherein said kiosk comprises three separate units, including at least one of a consumer interaction station (**Column 2 Lines 4 Lines 38 – 39**), an analysis station (**Column 2 Lines 6 – 9**), and a workstation (**Column 2 Lines 31 – 34**).
14. In regards to **claim 10**, **Steury** discloses further comprising a computer configured to store at least one custom pet food for an individual pet profile (**Column 3 Lines 60 – 62; Column 5 Lines 58 – 64**).
15. In regards to **claim 11**, **Steury** discloses further comprising graphics panels to advertise said kiosk and the functionality of said kiosk (**Column 4 Lines 47 – 57**).

***Claim Rejections - 35 USC § 103***

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. **Claim 5** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Steury et al. (US Patent 6,416,270 B1)**.

18. In regards to **claim 5**, **Steury** discloses wherein said kiosk is further configured to be locked (**Column 4 Lines 21 – 22**).

Steury fails to disclose covering the kiosk. However, it is old and well known that it is common business practice to provide some covering for portable kiosks for added security/privacy, such as the kiosks that are found in malls.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide a covering for a kiosk, such as the one disclosed by Steury, to provide an added security measure.

19. **Claims 12 – 15 and 17 – 24** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Burghardi (US Patent 6,681,717 B2)**.

20. In regards to **claim 12**, **Burghardi** discloses a method for marketing a customized food product for a pet using a kiosk, said method comprising:

providing the kiosk including at least at least one of a consumer interaction station, an analysis station, and a workstation (**Column 3 Lines 32 – 34; Column 7 Lines 51 – 54**);

providing a questionnaire at the consumer interaction station for profiling pets (**Column 2 Lines 27 – 30**);

performing an analysis of a biological sample for a pet at the analysis station  
(**Column 2 Lines 46 – 59; Column 4 Lines 6 – 10**);

receiving a customized pet food product formula based on the questionnaire  
answers and the biological sample at the analysis station (**Column 2 Lines 27 – 30**);  
and

preparing a sample of the customized product for the consumer at the  
workstation (**Column 3 Lines 17 – 22**).

Burghardi does not explicitly show a method of marketing, however, it would  
have been obvious to one skilled in the art that in order for producers, such as farmers,  
to know of the teachings of Burghardi some type of marketing or advertisement must be  
present in order to carry out the invention. Further still, prior teachings of customizing  
feed has also been known in the art as well, as is discussed in the background of the  
Burghardi.

21. In regards to **claim 13**, Burghardi discloses further comprising storing results of  
the questionnaire and the biological sample analysis as a pet profile at the analysis  
station (**Column 2 Lines 24 – 30**).

22. In regards to **claim 14**, Burghardi discloses further comprising using the pet  
profile stored at the analysis station to prepare additional portions of the product  
additive at the workstation for repeat consumers (**Column 7 Lines 58 – 67 – Column 8  
Lines 1 – 13**).

23. In regards to **claim 15**, Burghardi discloses wherein preparing a sample of the  
customized product at the workstation further comprises preparing a custom product

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additive to be added to a base formula (**Column 4 Lines 51 – 67 – Column 5 Lines 1 – 8**).

24. In regards to **claim 17**, **Burghardi** discloses wherein preparing a sample of the customized product comprises adding at least one of a dry product additive and a liquid additive to the base formula (**wherein it is inherently included that the various ingredients making up the custom feed would contain a combination of dry, liquid, or combination of dry and liquid; all of which are well known in the art**).

25. In regards to **claim 18**, **Burghardi** discloses wherein receiving a customized pet food product formula further comprises modeling questionnaire responses and the analysis of the biological sample (**Column 7 Lines 49 – 57**).

26. In regards to **claim 19**, **Burghardi** discloses wherein performing an analysis of a biological sample for a pet comprises performing the analysis using a computer located at the analysis station (**Column 3 Lines 23 – 33**).

27. In regards to **claim 20**, **Burghardi** discloses a method for providing a customized food product for a pet using a kiosk, the method comprising:

providing the kiosk including at least one of a customer interface area, a biological sample analysis and handling area, a base product storage area, at least one product additive storage area, and an ingredient mixing and customer observation area (**Column 3 Lines 32 – 34**);

receiving at least one of a biological sample and pet questionnaire information at the customer interface area (**Column 2 Lines 27 – 30, 46 – 59; Column 4 Lines 6 – 10**);



processing the data from the sample and the questionnaire at the biological sample analysis and handling area (**Column 2 Lines 46 – 59; Column 4 Lines 6 – 10**);

selecting a kibble from the base product storage area based on the processed data (**Column 3 Lines 17 – 22**);

mixing a customized additive from ingredients stored in the product additive storage area at the ingredient mixing and customer observation area based on the processed data (**Column 1 Lines 8 – 12; Column 4 Lines 51 – 67 – Column 5 Lines 1 – 8**) ; and

presenting the selected kibble and the customized additive to the customer at the ingredient mixing and customer observation area (**Column 4 Lines 51 – 67 – Column 5 Lines 1 – 8**).

However, Burghardi does not explicitly disclose the use of a kiosk. Nevertheless, Burghardi discloses the use of a workstation(s), and the like, (**Column 3 Lines 32 – 34**) and one skilled in the art of computer workstations would have found it obvious that such the workstation disclosed by Burghardi is indeed a kiosk. Burghardi discloses the workstation(s) that can be used in various locations, such as at the ingredient supplier or farm (**Column 3 Lines 23 – 34**), and that it serves as an interface for a user in order to input information for the production of a custom feed.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention that Burghardi does indeed provide a kiosk that includes a

customer interface so that information can be inputted to produce a custom feed for a specific animal/need.

28. In regards to **claim 21**, **Burghardi** discloses wherein processing the data from the sample and the questionnaire further comprises generating feeding instructions and package labels (**Column 4 Lines 6 – 10**).

29. In regards to **claim 22**, **Burghardi** discloses wherein presenting the selected kibble and the customized additive further comprises providing feeding instructions and package labels to the customer (**Column 4 Lines 6 – 10**).

30. In regards to **claim 23**, **Burghardi** fails to disclose wherein presenting the selected kibble and the customized additive further comprises presenting the customer with a customized measuring scoop for the kibble and a custom-selected spoon for the customized additive.

However, it would have obvious to one skilled in the art that some type of measuring device must be provided in order to properly deliver the appropriate quantity of feed to the animal/pet. Further still, Burghardi discloses that providing too much of a specific ingredient to an animal would produce unhealthy and possibly dangerous results (**Column 4 Lines 51 – 67**). Although Burghardi does present a solution to prevent too much of a specific ingredient to be incorporated in the overall quantity of the feed one skilled in the art, such as a farmer or veterinarian, would also know that overfeeding/underfeeding an animal is also unhealthy and that appropriate quantities must be measured out prior to the feeding.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the teachings of Burghardi to provide a customized measuring cup and custom-selected spoon in order to properly measure the quantity of feeding to prevent overfeeding/underfeeding.

31. In regards to **claim 24**, **Burghardi** discloses wherein presenting the selected kibble and the customized additive further comprises presenting the customer with recommendations concerning frequency and conditions of future biological sample analyses and profile updates for their pet (**Column 9 Lines 10 – 33; Column 10 Lines 25 – 40; Column 11 Lines 47 – 51**).

32. **Claim 16** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Burghardi (US Patent 6,681,717 B2)** in view of **Steury et al. (US Patent 6,416,270 B1)**.

33. In regards to **claim 16**, **Burghardi** fails to disclose further comprising affixing graphics panels to at least one of the consumer interaction station, the analysis station, and the workstation.

However, **Steury** discloses a kiosk configured to accept user input and dispense an item requested by the user. **Steury** teaches faceplates containing printed graphics, icons, and a display in order to instruct the user on how to use the kiosk (**Column 4 Lines 47 – 57**).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify **Burghardi** in view of the teachings of **Steury** to

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provide graphics on a kiosk station in order to instruct a user on how to properly use the various functions that the kiosk may provide.

***Response to Arguments***

34. Applicant's arguments with respect to claims 1 - 24 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

35. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure can be found in PTO-892 Notice of References Cited.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerardo Araque Jr. whose telephone number is (571)272-3747. The examiner can normally be reached on Monday - Friday 8:30AM - 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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